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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.
Nos. 248 and 249.

No. 248

JOHN HOWARD LAWSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 249

DALTON TRUMBO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION OF SOUTHLAND JEWISH ORGANIZATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR REHEARING.

The Southland Jewish Organization was formed during World War II to safeguard the civic, political, economic and religious rights of Jews and other minority groups everywhere; to aid in creating an informed opin-

ion concerning Jewish interests and culture; to support the aspirations of the Jewish people throughout the world for a homeland, now realized in the establishment of the State of Israel, and the development of that Nation as a worthy member of the community of nations; to furnish material aid to the victims of racial and religious oppression and to assist in their care and rehabilitation; to create mutual understanding and respect among all persons and groups of different religious faiths; to participate appropriately in the affairs of democratic government; and to strive constantly for the maintenance of a just and equitable peace for all the peoples of the world.

We are dedicated both to the American ideals of freedom and to the Jewish tradition. We know the agony of meaningless wars, the dread of persecution, the blight of tyranny. The State of Israel itself stands as a symbol of the relentless struggle of mankind for freedom, the miracle of freedom "rising again to destroy its destroyer." Lerner, M., *Freedom: Image and Reality* in Safeguarding Civil Liberty Today, N. Y. 1945, p. 37. We are, therefore, opposed to the practices and programs of a police state because we recognize that liberty disappears when coercion, censorship and thought surveillance becomes official policies of government.

In the view of our organization, oppression can be fought not by adopting the methods of the police state, but by maintaining and extending the democratic process. Recognizing that universal freedom requires the largest

diversity of effort and purpose, the Southland Jewish organization functions through such committees as its legislative committees, concerned with legislation and legislative activities on all levels of government affecting the welfare and liberties of the people; through its Jewish Affairs committees concerned with the problems of the Jewish people and their relations to the State of Israel; through the Interfaith committees which foster a spirit of tolerance and understanding among members of all faiths; and its Educational committees which bring to its members through lectures, forums, and publications a knowledge of the events of the day and their significance.

We are submitting this motion to file brief *amicus curiae* because it appears to us that the issues which arise in the instant case have significance beyond the borders of the particular conflict. A decision that an individual's belief, opinion or association may be compelled by government and subjected to stigma and punishment appears to us to be a limitation on the practice of democracy. We are concerned with the danger of such a ruling to the entire community of free men. It is this concern which has impelled our appearance here.

Petitioners have consented to this motion. The consent of the government has been solicited but not yet received.

POINT I.

Government Surveillance and Control of Beliefs, Opinions and Associations Are Inconsistent With Our Democratic Traditions.

The road which the Jewish people travelled from Diaspora to Israel was marked with the blood of countless numbers of martyrs, victims of violence and terrorism unparalleled in the history of civilization. It should be borne in mind that this persecution came not only from petty vigilantes obsessed with the views of racial superiority, but more often was the result of Government action intended to cloak policies of self-interest with an official scapegoat. The Jewish people have learned to examine life in process, to observe events of the day, not statically, but in the historic stream of man's struggle for freedom and dignity. The forced disclosure of a person's beliefs, opinions and associations do not, therefore, appear to us as the mere aberration of the day. It is a portent of things to come and a reminder of the not too distant past.

For the aforesaid reasons, we believe it relevant to bring to the attention of this Court some of the methods by which Hitler and his followers seized and consolidated power in 1933. They will help to explain our concern with the issues which arise in this instant case. "In both nations (Italy and Germany) the Fascists succeeded to a certain extent in creating a category of second-class citizenship for anyone whom they chose to consider 'radical' and depriving him of equal rights before the law. In both nations, the liberals as a whole did not see clearly that once this category was created, they, too, could be pushed into it." Raushenbush, S., The March of Fascism,

New Haven 1939, p. 281. It is not our purpose to make invidious comparisons. We seek only to demonstrate that the democratic process may be swiftly eroded if those who cherish freedom are not eternally vigilant, and that freedom which is essentially indivisible cannot be attacked at one point without suffering injury at another.

The data which follows is from the official records prepared by the American and British prosecuting officials for presentation before the International Military Tribunal at Nuremberg, Germany (Nazi Conspiracy and Aggression, Government Printing Office, 1946, vols. I-VIII, Supp. A and B). We pass over, as beyond comment, the record of wanton destruction of life and property visited upon human beings because of their religious and political creeds. This perhaps may be noted: "The people killed by the Nazis belonged to various political parties and religious faiths, such as Democrats, Catholics, Communists, Jews and pacifists." *Op. cit.*, Vol. I, p. 240.

One of the first decrees issued by the Nazis was a registration measure, intended to identify subsequent victims and to keep them under constant surveillance and fear.

> "1. Jews who finished the sixth year of their age are prohibited to appear in public without a Jewish star.
>
> 2. The Jewish star consists of a 'Six Star' with black contours in the size of the palm of the hand of yellow material with the black inscription 'Jew.' It has to be worn on the left side of the chest of the clothing tightly sewed on."
>
> *Op. cit.*, Vol. V, p. 539.

In 1935, the first regulation issued under the Reich's Citizenship Law provided: "A Jew cannot be a citizen of the Reich. He has no right to vote in political affairs; he cannot occupy a public office." *Op. cit.*, Vol. IV, p. 9. The exercise of the franchise became a dead letter for other groups as well. Another decree provided: "The National Socialist German Worker's Party constitutes the only political party in Germany." *Op. cit.*, Vol. III, p. 962.

The civil service was reorganized with the issuance of a decree on April 7, 1933:

"Article 3.

Officials, who are of non-aryan descent, are to be retired—

* * * * * * * *

Article 4.

Officials, whose former political activity does not offer a guarantee that they at all times without reservation act in the interest of the national state can be dismissed from service."

Op. cit., Vol. III, p. 982.

A supplementary decree issued on July 20, 1933, provided:

"I. Officials, who have belonged to the Communist party or to auxiliary or collateral organizations, or otherwise have been active in furthering the aims of communism, are to be discharged.

II. Officials, who in the future are active for Marxism (Communism or Social Democracy) are to be discharged."

Op. cit., Vol. III, p. 987.

In the drive to crush all opposition, "hostile criticism, indeed criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it. Independent judgment, based on freedom of thought, was rendered quite impossible." Nuremberg Opinion and Judgment, *Op. cit.*, p. 12. The legislative and judicial powers of the German Reich were systematically employed to terrorize all political opponents. The Nazis enacted a law which made it a crime deliberately to make false statements calculated to injure the prestige of the Reich. The law also applies to statements which were not made in public, provided the offender counted on his statements being eventually circulated in public. *Op. cit.*, Vol. I, p. 242. On April 24, 1934, it was made a treasonable act punishable by death to create or organize a political party, or to continue an existing one. Moreover, a new concept of penal law was introduced. Any act injurious to the political interests of the State could be punished even if no existing statute forbade it. *Op. cit.*, Vol. I, p. 243.

A vast system of espionage into the daily lives of all parts of the population was instituted. In February, 1933, a decree provided that violations of privacy of postal, telegraphic, and telephonic communications were permissible beyond legal limitations. "Subsequently, the system of spying upon and supervising the political opinions of each citizen which permeated the entire people and private life of Germany, was, of course, also extended to judges." *Op. cit.*, Vol. I, p. 244.

At the same time, independent labor unions were destroyed; all union funds and property were confiscated, and trade union leaders sent to prison or death. In 1936, Robert Ley, the Nazi director of the German Labor Front,

was able to report: "National Socialism has conquered the factories. Factory Troops are the National Socialist shock troops within the factory, and their motto is: the Fuehrer is always right." *Op. cit.*, Vol. I, p. 258.

The drive for complete ideological conformity flowed over into the area of religious belief. The influence of the churches over the people of Germany was constantly subverted. Religious publications were suppressed. Severe acts of repression were visited upon the Catholic Church. The Jews were systematically eradicted. *Op. cit.*, Vol. I, pp. 296-306.

The educational system was reshaped. As Hitler stated in Mein Kampf: "On this whole basis the whole education by the National State must aim primarily not at the stuffing with mere knowledge, but at the building up of bodies which are physically healthy to the core. The development of intellectual faculties comes only after this." All teachers were required to take an oath of loyalty and obedience to Hitler. *Op. cit.*, Vol. I, p. 314. At the same time, all organs of propaganda (press, radio, films) and other cultural activities were made subject to the supervision and censorship of the Party Propaganda Department headed by Goebbels. The task of the Reich Chamber of Literature was to protect writers "from undesirable elements" and to keep out of the book market everything "un-German." *Op. cit.*, Vol. I, p. 338. The function of the Reich Film Chamber was to lift the film industry "out of the sphere of liberal economic thoughts" and to "receive those tasks which it has to fulfill in the National Socialist State." *Op. cit.*, Vol. I, p. 338.

This, in summary, is the tragic story of the destruction of civil liberty which sealed the fate of German democracy. The rule of law was replaced by the rule of

the lash and the concentration camp. Undoubtedly more than one lesson can be learned from this dark period in civilization's history. This, at least, we believe can be stated here: To avoid such ends, we must halt all beginnings. A single precedent may set loose a chain of reactions which can place permanent restrictions upon liberty. Civil liberties must be preserved, not merely in order to protect the individual citizen from brutal and unjust treatment, but in order that American democracy itself may be kept alive. If we lose our basic loyalty to the principles of freedom of thought, of speech, press and association, if those in office may not be publicly opposed or criticized, if those who discuss changes in our institutions are to be treated as dangerous and subversive criminals, then history—a very tragic history—may well repeat itself.

This Court has itself observed that the struggle to coerce uniformity of opinion is contrary to our basic democratic tenets. In the flag salute case (*West Virginia State Board of Education v. Barnette,* 319 U. S. 624), Mr. Justice Jackson, writing for the majority, stated (p. 641):

> "Those who begin coercive elimination of dissent soon find themselves eliminating the dissenters. Compulsory unification of opinion achieves only the uniformity of the graveyard.
>
> * * * * * * * *
>
> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." (*Id.,* p. 642.)

Conclusion.

The Southland Jewish Organization respectfully urges upon this Court a determination of the issues herein which will reinvigorate the democratic process. A decision by this Court that compulsory disclosure and censorship of belief, opinion and association are contrary to the fundamental law will go far in maintaining the civil liberties of minority groups throughout the nation. Indeed, such a decision will have deep meaning for minorities and majorities alike, for all of us have a common stake in human decency and the brotherhood of man.

Respectfully submitted,

SOUTHLAND JEWISH ORGANIZATION,

By A. L. WIRIN,

Their Attorney.